

REMARKS

Claims 1, 5, 6, 8 and 10-16 are pending in this application. By this Amendment, claims 1, 6, 8 and 16 are amended. No new matter is added. Claims 3, 9, 18 and 19 are canceled without prejudice to, or disclaimer of, the subject matter recited in those claims. A Request for Continued Examination is attached. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

The Office Action, in paragraph 2, rejects claims 1, 3, 5, 6, 8-16, 18 and 19 under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

Independent claims 1, 6 and 8 are amended to obviate the rejection and to clarify the features recited in those claims.

Accordingly, reconsideration and withdrawal of the rejection of claims 1, 5, 6, 8 and 10-16 under 35 U.S.C. §112, second paragraph, are respectfully requested.

The Office Action, in paragraph 5, rejects claims 1, 3, 5, 6, 8-16 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,292,724 to Apsell et al. (hereinafter "Apsell") in view of U.S. Patent No. 6,078,850 to Kane et al. (hereinafter "Kane"). This rejection is respectfully traversed.

Apsell teaches a tracking system for a fleet of vehicles (col. 1, lines 13-23). Specifically, Apsell monitors equipment use and operating conditions (col. 1, lines 39-50). A satellite-based transponder system sends data from the equipment to a satellite (col. 1, lines 60-63, col. 2, lines 53-58, col. 3, lines 39-43).

Kane teaches a management system for a vehicle having a commodity storage region and traveling along a path having a plurality of geographically-distributed commodity replenishing stations, a goal of which is to calculate commodity replenishing schedules of the vehicle based on optimizing a number of factors (Abstract). More specifically, Kane

discloses a train refueling system that includes a controller on board the vehicle for storing a record of the current geographic locations of the fuel stations and the current fuel prices, and for calculating refueling schedules of the vehicle at the fueling stations based on an outfit put from each of the GPS data and the fuel sensor and a fuel price at at least some of the refueling stations (col. 2, lines 29-35).

Claim 1 recites, among other features, a positional information detector that is provided in the construction machine and is configured to detect positional information of the construction machine; and a tie-up station side device that is provided at the tie-up station, is connected with the base station side transmitter through a specific communication means, and is configured to receive the information relating to the request for refueling the construction machine and the detected positional information transmitted from the base station side transmitter, wherein the tie-up station side device performs processing to determine a refueling vehicle to be dispatched to the construction machine and an order in which the refueling vehicle is to be dispatched to the construction machine to refuel the construction machine in response to the request of refueling, based on the received positional information and management data from the tie-up station. Independent claim 6 recites similar features. Claim 8 recites, among other features, refueling station devices respectively provided at a plurality of refueling stations; and a communications device that is configured to (1) obtain information relating to the refueling station selected by the selector and (2) communicate with a refueling station device provided at the refueling station selected by the selector to request refueling of the construction machine by the selected refueling station, wherein the refueling station device is configured to perform processing to determine whether there is a request for refueling of the construction machine and to output an instruction to a refueling vehicle to be dispatched to the construction machine to refuel the construction machine if there is the request for refueling of the construction machine. Any permissible combination of Apsell

and Kane cannot reasonably be considered to teach, or to have suggested, these combinations of features.

Specifically, there is nothing in either of Apsell or Kane that can reasonably be considered to correspond to any feature to determine a refueling vehicle to be dispatched to the construction machine and an order in which the refueling vehicle is to be dispatched, or to perform processing to determine whether there is a request for refueling of the construction machine and to output an instruction to a refueling vehicle to be dispatched to the construction machine to refuel the construction machine if there is a request for refueling of the construction machine, as positively recited, among other features, in independent claims 1, 6 and 8.

For reasons set forth previously, Applicants continue to believe that the Office Action improperly makes liberal use of official notice in an attempt to fill the voids in the obviousness analysis. Further, the Office Action continues to provide merely a conclusory analysis regarding the combinability of the applied references. No objective evidence of record is provided supported by any rational underpinning that would meet the standard for such a required showing based on numerous judicial precedents. It remains unclear that one of ordinary skill in the art given the teachings of Kane and Apsell before him or her would have been motivated to combine those teachings in the manner suggested by the Office Action with any reasonable expectation of success, or any reasonable degree of predictability that such a combination would achieve the objectives achieved by the subject matter of the pending claims.

Further, Applicants are concerned that the Response to Arguments section particularly with regard to attempting to rebut Applicants' previous arguments made regarding the combinability of the references (1) mischaracterizes Applicants' arguments; (2) overly broadly applies the essential holding of the U.S. Supreme Court in *KSR International Company v.*

Teleflex Inc.; and (3) ignores the very positive assertion of the Supreme Court that favorably endorsed the essential holding of *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Specifically, the Supreme Court made clear that "to facilitate review, this analysis should be made explicit." The Supreme Court continued, quoting *Kahn*, that, as Applicants specifically argued, almost *verbatim*, in their previous response, "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." To assert that Applicants' arguments made previously regarding the combinability of the references, which relied in pertinent part on *Kahn*, in any way apply an "erroneous standard for obviousness" mischaracterizes the Supreme Court's specific conclusions outlined in the *KSR* decision. It is, therefore, of concern to the Applicants that the Office Action asserts that, after mischaracterizing Applicants' arguments, "the Supreme Court specifically addressed arguments of this kind and have foreclosed this type of argument." Applicants were then and are not now, not arguing old law. The arguments specifically addressed the standard favorably endorsed by the Supreme Court in the *KSR* holding. To characterize Applicants' arguments otherwise is clearly inappropriate.

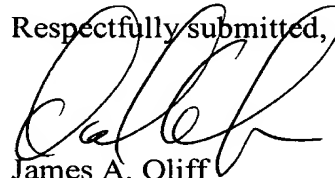
For at least the foregoing reasons, Applicants maintain that Apsell and Kane are not combinable in the manner suggested by the Office Action. Regardless, however, any permissible combination of the applied references cannot reasonably be considered to have suggested the combinations of all of the features positively recited in at least independent claims 1, 6 and 8 for the reasons set forth above. Further, claims 5 and 10-16 are also neither taught, nor would they have been suggested, by this combination of applied references for at least the respective dependence of these claims directly or indirectly on allowable base claims, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejection of claims 1, 5, 6, 8 and 10-16 under 35 U.S.C. §103(a) as being unpatentable over Apsell in view of Kane, are respectfully requested.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 5, 6, 8 and 10-16 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



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JAO:DAT/cfr

Attachments:

Request for Continued Examination
Petition for One-Month Extension of Time

Date: January 3, 2008

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